

FROM: 41112018  
 TO: Felman, James  
 SUBJECT: Complaint SD Cal.  
 DATE: 11/21/2018 01:10:33 PM

JESUS ANTONIO MONDACA Sr. # 18558-198  
 FCI SHERIDAN P.O. BOX 5000 SHERIDAN  
 OREGON 97378

IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JESUS ANTONIO MONDACA Sr.  
 Plaintiff Pro-Se,

V.

CASE No. '18CV2755 DMS WVG

EXECUTIVE UNITED STATES ATTORNEY'S OFFICE  
 Defendants,

#### VERIFIED COMPLAINT

The plaintiff brings this action for injunctive, declaratory and monetary relief pursuant to the Freedom of Information Act, 5 U.S.C. @ 552(a) et seq., and the Privacy Act 5 U.S.C. @ 552a et seq., and the Federal Declaratory Judgment Act, 28 U.S.C. @ 2201, and all other appropriate relief. Plaintiff makes these claims with first hand knowledge of the facts under the pains and penalties of perjury. Plaintiff is seeking the disclosure and release of agency records, and recordings improperly withheld from him. Plaintiff is also he is seeking that those improperly withheld records and "recordings" be released in order to show and- to reflect the true context's of what was stated by him to be "Accurately" verified, and reflected in his records.

#### JURISDICTION

1. This court has both subject matter Jurisdiction over this action, and personal jurisdiction over the parties Pursuant to 5 U.S.C. @ 552(a)(4)(B); 5 U.S.C. Subsections 552a(g)(1), and 28 U.S.C. @ 1331.

#### VENUE

2. Venue is appropriate in the district under 5 U.S.C. Subsections 552a(g)(5), 552 (a)(4)(B), and 28 U.S.C. @ 1391

#### PARTIES

3. Plaintiff Jesus Antonio Mondaca is a derived citizen of the United States and the Southern District of California is where he resided, when this case records were utilized in his prosecution by the Government.

4. The defendant's Executive United States Attorney's is an agency within the meaning of 5 U.S.C. 552a(a)(1), and is in possession and /or control of records pertaining to Plaintiff Jesus Antonio Mondaca Sr..

#### FACTS

5. Plaintiff is a Prisoner in the custody of the United States department of Justice Bureau of Prison's, and has been in Prison since the time of his arrest, now nearing 30 years.

6. While in prison this Plaintiff was in transit to the West Coast in 2017, and had conversations with another inmate about the legal aspects of his case, and was advised\* that he needed to file a freedom of information Act, to get the original tape recordings, of when the informant Frank Cooney called, and recorded him to set him up, on all the relevant dates, as stated in the indictment by the defendant's and their agent's. Plaintiff is also seeking all the agent's Raw notes. Because those "Recordings" and "Raw-Notes" of the agent's are the only 'true and accurate account's of what was said, of what took place, and what transpired, and of course the "only" real "live" Proof, foundation and basis for his arrest, and subsequent conviction and incarceration.

<b>FILED</b>	
DEC 3 2018	
CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY DEPUTY	
2018	1983 <input checked="" type="checkbox"/>
<b>FILING FEE PAID</b>	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
<b>IFP MOTION FILED</b>	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<b>COPIES SENT TO</b>	
Court <input checked="" type="checkbox"/>	ProSe <input type="checkbox"/>

7. This Plaintiff with inmate "jailhouse lawyer" help started filing FIOA/PA request's. (This Plaintiff is suffering from post traumatic stress disorder "PTSD" and was/is not able nor qualified to litigate) The request's were made to the Executive United States Attorney's Office in Washington D.C. for records and recordings concerning those recorded calls. Plaintiff filed Other Motion's in the district court of conviction, for relief under Amendment 782 to the United State's Sentencing guidelines -2 point's, and for relevant Grand jury material that is also needed for him to prove his case, and for relief. This Complaint and those submission's were drafted and filed with the help of a jailhouse lawyer type, filed with the defendant's and filed to the Southern District Court in California San Diego.

8. This Plaintiff stated he realized that he in fact, was never given a copy of those records ("raw-notes") and recordings, and [ That The Mondaca's, father' and son] was charged with conspiracy, and subsequently convicted for a crime of "Conspiracy". This Plaintiff was explained the element's of "Conspiracy" which-is- in essence an agreement between two or more people to commit a crime, separate from the crime itself, here to "agree" to sell, and actually deliver drugs, as charged in the indictment. This plaintiff stated that he did not agree to commit and crime nor, to deliver drugs to anyone, and simply only stated a "Non-Committal" response to questions asked by the informant, in hopes of being paid money owed him prior to Mr. Frank Cooney's arrest for being a felon in possession of a firearm.

9. After this plaintiff was explained the law, and after more conversation's with the writer of this complaint, Plaintiff Mr. Mondaca Sr. Essentially demanded that all the agent's "raw-notes" and "recordings" to be provided/produced via a FOIA/PA in request Number EOUSA-2018-005751(Attached here). Plaintiff also feels there is discrimination plays a part in his criminal case.

10. By letter Plaintiff Mr. Mondaca Sr. was denied his request (number above) , and this rights under the Freedom of information Act, to have his own records, and recordings made of him. Here in this case that were the basis for his arrest, conviction and imprisonment, and that he was never provided with this information. Plaintiff was also denied his right's under the Privacy Act to have correct records.

11. By letter Plaintiff Mr. Mondaca Sr. filed an appeal Number DOJ-AP-2019-000291(Attached here), with the U.S. Department of Justice office of Information Policy and was denied that appeal on November 9th, 2018.

12. On November 19, 2018 Plaintiff filed a request to the Office of Information Policy to reconsider his request and appeal of the same,( Attached here), and have not received a response (at the time of this writing).

#### The Direct Appeal

The direct appeal raised numerous misconduct issue's and jury manipulation in his case, and Mr. Mondaca Sr. was denied relief.

#### POST CONVICTION PROCEEDINGS:

The Writer does not have the records in this case and is not aware of the relevant issue's in the post conviction proceeding.

#### FIRST CAUSE OF ACTION (FREEDOM OF INFORMATION ACT AND PRIVACY ACT) DENIAL TO ACCESS RECORDS AND RECORDINGS.

16. Plaintiff repeats the facts contained in paragraph 1 to 15 above with first hand knowledge of the facts supported by exhibits to prove the same. The Court has authority to enjoin the agency from withholding under FOIA/PA (g)(1).

17. By FOIA/PA form drafted by his Jailhouse lawyer Prisoner, this Plaintiff filed a FOIA/PA request (numbered above) for all records and recordings to to be provided this material by the Executive United States Attorney's Office, and a request to that agency (EOUSA) to forward the same, to all counterparts involved in the case, because those records and recordings were "flowed" Ultimately to the EOUSA office for use in the prosecution of this Plaintiff and his son Jesus Antonio Mondaca Senior and Junior with criminal charges.

18. The defendant's refused to provide this Plaintiff with any records and recordings to date. Plaintiff filed his appeal as stated above and was denied. Plaintiff has exhausted all required and available administrative remedies known to him at this time.

19. Plaintiff has a legal right under the Freedom of Information Act and the Privacy Act to Obtain and have accurate records, that is concerning himself. Moreover, there is no legal basis for the defendants EOUSA for denial of that right to him, and for "him" to first have all records and recordings, i.e., concerning himself, and for him to "have" those records, and recordings, so he can authenticate them for accuracy, and to use the same records and recordings to seek relief from an illegal life sentence

on the basis to those recording and agent's "raw-notes" that he was never provided in his criminal case, that resulted in him being convicted on the basis of falsely misconstrued hearsay, after the fact.

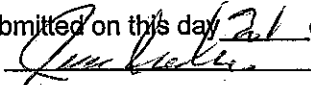
20. The Defendant's EOUSA categorically denied this Plaintiff's request. Its response took the form of a "Glomar response," in which an agency state's that it "can neither confirm nor deny" the existence of responsive records on the grounds that to do so would reveal information exempt from disclosure under FOIA.

21. In The Appeal defendant's stated that the "EOUSA properly refused to confirm or deny the existence of records responsive to your request. Confirming or denying the existence of such records, including law enforcement records, concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy. (citing 5 U.S.C. @ 552(b)(6),(7)(C)) Additionally, it is reasonably foreseeable that confirming or denying the existence of such records would harm the interests protected by these exemptions." That response is in error and did not address this plaintiff's request for records and recordings concerning himself. Moreover, those records may be released because "no privacy interest would be invaded by disclosing the information, when the information is already public or required to be made public or where as here there is such a strong public interest in the disclosure that it overrides the individual's privacy interest." Id. (citing U.S. DEP'T OF JUSTICE, FREEDOM OF INFORMATION ACT REFERENCE GUIDE, AT 4 (NOVEMBER 2003) See *Griselle Marino v. Drug Enforcement Administration*, 15 F. Supp. 3d 141; 2014 U.S. Dist. LEXIS 20191 Civil Action No. 06-1255(GK).

## CONCLUSION

WHEREFORE, agent's agent's unfaithful to their oaths of Office Title 5 U.S.C. @ 3331 created false records and reports off of recordings they made, and are withholding in violation of Plaintiff's right's to have information concerning himself, and have accurate information. The agent's violated agency policy by arbitrarily and capriciously creating false records to injure Plaintiff's legal right's, character and safety, with full impunity. Plaintiff request's this Court do Justice, and award the following relief.

- (i) Declare that all the records and recordings sought be provided to this plaintiff;
- (ii) Declare that the defendants Violated the Freedom of Information and Privacy Act;
- (iii) Order that the defendants mark, make, and/or expunge all of these false records, and/or make corrections to the same records, with notifications to the records to conform with the standard of "accuracy, relevant, timely and complete";
- (iv) Award Plaintiff any actual damages under 5 U.S.C. @ 552(a)(g)(4)(A), the exact amount of which is to be determined at trial;
- (v) Invoke its equitable powers to expunge all records or information maintained by the defendants that are inaccurate and /or derogatory to Plaintiff Jesus Antonio Mondaca Sr.
- (vi) Award Plaintiff reasonable costs and fees as provided in Title 5 U.S.C. @ 552(a)(g)(3)(B) and/or (4)(B), 552 (a)(4)(E) and/or 28 U.S.C. @ 2412(d);
- (vii) Refer those agents responsible for Violating the FOIA/PA for Prosecution under 5 U.S.C. 552(a)(1)(I);
- (viii) Expedite this action in every way pursuant to 28 U.S.C. @ 1657(a); and
- (ix) Grant such other relief as this honorable Court deems just and proper.

Respectfully submitted on this day 21 of November 2018 under the pains and penalties of perjury in accordance with 28 U.S.C. @ 1746 

Footnote:

Plaintiff does suffer from PTSD and is not able to effectively litigate these claims due to his condition, and request's that all needed legal assistance be provided to him to effectively present his claims for relief.

## CERTIFICATE OF SERVICE

I Jesus Antonio Mondaca Sr. hereby state with first hand knowledge that a true copy, with exhibit's (Attached here) to this Verified Complaint, are Plaintiff's copies of the original request and The defendant's response, Copy of Plaintiff's appeal with

exhibits, and the defendants response to the same. Moreover, also attached hereto this complaint is Plaintiff's request for the defendants reconsider his appeal. All mailed via first class mail by certified delivery to this Honorable Court (with an additional copy of the same), Mailed On this day 21 of November, 2018. Further, Plaintiff requests (If applicable) that all relevant parties be notified by the Clerk of Court Via- a ECF/CM notice to all parties.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA SAN DIEGO LOCATED AT 333 WEST BROADWAY, Suite # 420 SAN DIEGO CALIFORNIA 92101

FROM: 41112018  
TO: Felman, James  
SUBJECT: FOIA/PA APPEAL-EOUSA-2018-005751  
DATE: 11/19/2018 01:33:21 PM

From: Jesus A Mondaca, Sr. Fed. # 18558-198  
c/o FCI Sheridan P.O. Box 5000  
Sheridan OR 97378

To: Director Office of Information Policy (OIP),  
United States Department of Justice, Suite 11050  
1425 New York Avenue, NW, Washington, DC 20530-0001

PLEASE NOTE THAT MY FREEDOM OF INFORMATION AND PRIVACY ACT REQUEST No. EOUSA-2018-005751 WAS RECEIVED BY THE OFFICE OF INFORMATION POLICY (OIP) OF THE U.S. DEPARTMENT OF JUSTICE ON 10/12/2018 ASSIGNED APPEAL NUMBER: DOJ-AP-209-000291 This is an expanded Version of my appeal and request that the agency reconsider my request for the following reason's!

The agency cites People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535 at 544(D.C. Cir. 2014); and Antonelli v. FBI, 721 F.2d 615, at 618(7th Cir. 1983) reason's for withholding that are inapplicable to my request, and evidence presented.\* This requestor has presented a copy of his Appeal and the existance of the records sought is not at issue--But the records the agents "raw notes" and "recordings" are, and are being sought in good faith. In United States v. U.S. Dist. Court, Cent. Dist. of Cal., 717 F.2d 478(9th Cir. 1983), the court of appeals issued a writ of mandamus vacating the trial court's order's requiring the government to respond to defendants John DeLorean's 18 FOIA request's.

Dear Sir/Madam or to whom it may Concern in the Office of the ("OIP") with regards to my request for records and this appeal. I do believe these records do exist, and/or not to be exempt under FOIA/PA as Claimed, and therefore appeal the denial of my request, and request it be reconsidered at this Time. The informant's, and facts are in the public domain, and these records are Public records of Vital importance to Plaintiff's claim of actual innocence in the criminal case, in fact confirming that, "innocence" by the recordings and raw-notes made by the agent's, that are NOW sought.

#### FACTS AND REQUEST:

1-On August 22, 2018 I forwarded a request under the Freedom of Information Act for records, and Privacy Act for records and/or correction of the same records that are "verifiably false" when compared to the original recordings made, along with the "original" raw notes of the agents. See Attached hereto this Appeal my FOIA/PA request Exhibit -A.

2- By Letter dated On September 24, 2018 I was denied my FOIA/PA Right's, and request Inter-Alia, i.e., with a Via Glomer response where the Agency Cite The Privacy Act 552a, along with the Freedom of Information Act exemptions under Title 5 @ 552(b)(6) and @ 552(b)(7), that which the agency claims pertain to those records, and whose disclosure would result in an Unwarranted invasion of Personal Privacy. See, Attached Letter by the Executive United States Attorneys Office dated September 24, 2018 Exhibit -B.

3- I believe I have a right to have those records and to have accurate records under FOIA/PA, and don't believe these records are exempt under the FOIA/PA as claimed. Moreover, I object to sections of my request were bring ignored. Including my request to forward that same "request" under FOIA/PA to the other agency counterparts of the Department of justice, that were involved in the same case, of which generated those same false records, that were "flowed" to the Department of justice Executive United States Attorney's Office. I request that all these records and recordings be released, as they do exist and are no any invasion of anyone's Privacy as these recordings are accentually recorded Phone call's, and only being sought to prove a actual innocence claim by Jesus Antonio Mondaca Sr. who has been in Prison close to 30 years on the basis of these "recorded" calls that were withheld, due to ineffective assistance of Counsel, and government violation of his obligations under Brady v. Maryland Supra. To withhold records and recordings sought is arbitrarily and capricious.

#### PRIVACY ACT:

4- The Privacy Act requires federal agencies to maintain records used in making determinations "with such accuracy, relevance, timelines, and completeness as is reasonably necessary to assure fairness to the individual in the determination [of matters concerning the individual] title 5 USC @ 552a(e)(5). Title 5 USC @ 552a(d) allows individuals access to agency records about themselves and to request the amendment of records "they believe to be inaccurate, irrelevant, untimely, or incomplete."



Doe v. Federal Bureau of Investigation, 290 U.S. App. D.C. 289, 936 F.2d 1346 at 1350 (D.C. Cir. 1991). Subsection (g)(1)(A) and (C) of the Privacy Act authorizes civil action to enforce the amendments and accuracy requirements. In addition, subsection (g)(4) of the Privacy Act provides for Monetary damages, costs and attorneys' fees where the agency is shown to have acted intentionally or willfully. Id. at 1350. See, e.g., Comp. Prof'ls for Soc. Resp. v. Secret Serv., 72 F.3d 897, at 905 (D.C. Cir. 1996). The "raw-notes" and "recordings" are necessary to confirm evidence of his innocence.

5- A agency may be liable for "actual damages sustained by the individual as a result of the refusal or failure" to maintain accurate records and "consequently a determination is made which is adverse to the individual" as here, a Civil Action is available under Title 5 USC @ 552a(g)(1)(C) and (g)(4)(A). However, I seek to avoid needless litigation, and simply request my right's to have these records, and to have accurate records under FOIA/PA, be respected in full.

6- To the extent that I am seeking to have my records amended, I require access and a accurate copy of the recordings that were made, along with all other agent's 'raw-notes' and reports. Charging me falsely with Conspiracy under Title 21 USC @ 841 (b)(1)(A) and under section 846, because there was never no 'specific' intent nor any agreement' made. Here by myself, nor by my son Jesus Antonio Mondaca Jr. to actually sell, or to deliver drugs, nor was there any agreement "made" on the "price" of "Drugs" to sell Mr. Frank Cooney, nor to Joe Belmonte. There was also no agreement between me and my son Jesus Mondaca Jr. to sell, nor deliver any drugs, nor was there any "agreement on the "price" of drugs to actually be sold to the informant, nor was there ever any "drugs"!

7 In Sum-A noncommittal response to the informant's questions is not a "agreement" nor a Conspiracy. The Agency should do the commendable thing and release all the records Under the FOIA/PA, Then correct, and/or amend all these falsely generated records under the Privacy Act. There was no response to this question, and conceded.

#### FREEDOM OF INFORMATION ACT:

8- The purpose of FOIA is to "pierce the Vail of administrative secrecy and to open agency action to the light of public scrutiny." Morley v. C.I.A., 508 F.3d 1108, 1114, 378 U.S. App. D.C. 411 (D.C. Cir. 2007) (quoting Dep't of Air Force v. Rose, 425 U.S. 352 at 361 (1976)). FOIA "requires agencies to comply with requests to make their records available to the public, unless the requested records fit within one or more of the nine categories of exempt material." See, e.g., Yonemoto v. VA, 686 F.3d 681 (9th Cir. 2011); Dobronski v. FCC, 17 F.3d 275 (9th Cir. 1994). See, Minnis v. Dept of Agric., 737 F.2d 784 at 786 (1984); Van Bourg, Allen Weinbetg & Roger v. NLRB, 728 F.2d 1270 at 1272 (9th Cir. 1984).

#### BACKGROUND FACTS:

9- JESUS ANTONIO MONDACA Senior and Junior were Charged with violation of Title 21 United States Code Section 841 and 846, thereafter convicted, as a result of a series of recorded telephone calls made by a Mr. Frank Cooney in a falsely Orchestrated "Sting operation" after the informant skipped out of town on gambling and drug debts he ran-up. The Agent's tactic's involving Mr. Frank Cooney, who owed Jesus Antonio Mondaca Money, and who became a government informant, after being arrested for being a felon in possession of a firearm, and subsequent phone calls to pay his debt to Jesus Antonio. Mondaca if he could locate drugs was a sham, as there was never no drugs. There could very easily be some seriously misleading mix-up in this case! Informant "Cooney testified that following his indictment for being a felon in possession of a firearm, he agreed to cooperate with federal drug agents and to investigate whether several of his former criminal associates were still involved in dealing drugs." See, Attached Ninth Circuit Court of Appeals case Opinion on Appeal nos. 91-50563 & 91-50564 Exhibit-C.

10- The Indictment in this case falsely Charged both of the Mondaca's, Senior and Junior, that they "did knowingly and intentionally conspire with each other and with divers other persons unknown to the grand jury to knowingly and intentionally possess with intent to distribute approximately 5 kilograms and more of cocaine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1)." (quoting the Indictment verbatim). There was never any actual agreement nor any intent, nor any Drugs in this case.

11. Moreover, in this case the Indictment falsely Charged Specific "Overt Acts" numbered from 1 to 7, based on these withheld and claimed recorded calls. See Indictment Exhibit-D.

12- Jesus Antonio Mondaca Sr. who has been in prison or jail for almost 30 years, declares With firsthand knowledge of the facts and under the penalty of perjury states that:

(i)- The Mondaca's did not offer drugs to the informant. The informant asked for drugs and quoted the amounts. See, Overt Act at # 2.

(ii)- Jesus Antonio Mondaca Sr. Did in fact ask for some of his money in advance to what he was owed ((prior)) to the informant skipping town, and being arrested for being a felon in possession of a weapon. see Overt Act at # 3.

(iii)- Jesus Antonio Mondaca Sr. did have a conversation on drugs that the informant started, but he did not agree to anything. See, Overt Act at # 4.

(iv)- Jesus Antonio Mondaca Jr. never agreed to sell any amount of drugs nor did he agree to the cost. What he was doing was keeping the informant on the phone. See, Overt Act at # 5

(v)- Jesus Antonio Mondaca Jr. had no personal knowledge to confirm his father's agreement, because his father Jesus Antonio Mondaca Sr. did not make any agreement to sell cocaine, nor make any "agreement" on the price of cocaine statements made by the "informant".

See, Overt Act at # 6.

(vi)- Jesus Antonio Mondaca Jr. never agreed to sell the informant drugs. See Overt Act at # 7.

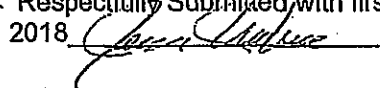
Simply making a passive noncommittal response to the informants statement's is not a "conspiracy".

13- The records sought in this case exist, and would not be violating the Privacy Act 552a if released, nor be in violation of the Freedom of Information Act section 552(b)(6) and (b)(7) as invoked. See, Steinberg v. Dep't of Justice, 179 F.R.D. 366, at 371 (D.D.C. 1998) Stating that after the government disclosed the names of FBI sources, it could not argue that the contents of their FBI interviews should be withheld to protect their identities, aff'd, 1999 WL 1215779 (D.C.Cir. Nov. 5 1999). The requestors interest, and the Public Interest is far greater-importance in disclosure of all the requested records in this case, and far outweighs any claimed Agency exemptions as stated. The informant's names and what they did are in the 'Public domain' and Public record. It is in the 'Public interest' to know the government agent's ignored red-flags', and built it's case on flimsy evidence, while disregarding it's discovery obligations. It is also in the 'Public interest' to know that the government "might" have acted negligently or otherwise improperly during the Mondaca's prosecution. See, Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157 at 174 (2004).

13- FOIA's "limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." See, ACLU v. U.S. Dep't of Justice, 655 F.3d 1 at 5(D.C. Cir. 2011). If documents contains exempt information, the agency must still release 'any reasonably segregable portion' after deletion of the nondisclosable portions." See, Oglesby v. Dep't of Army, 79 F.3d 1172 at 1176(citing Title 5 USC @ 552(b)). "At all times, courts must bear in mind that FOIA mandates a strong presumption in favor of disclosure, and that the statutory exemptions, which are exclusive, are to be narrowly construed." See, ACLU, 655 F.3d at 5.

WHEREFORE, Jesus Antonio Mondaca Sr. Respectfully request's that all records, and recordings pertaining to Jesus Antonio Mondaca Sr. And Jr. be released in full, and that all these records be accurately amended to reflect the true context of the same recorded telephone calls made by the informant Provocateur Mr. Cooney to the Mondaca's after Informant Provocateur here Mr. Frank Cooney was arrested for being a felon in possession of a firearm.

Respectfully Submitted with first hand knowledge of the facts under 28 USC @ 1746 on this 19 day of November 2018



\* The Listed Exhibits are not included as Evidence and in the appeal file. As this is only a request to reconsider this Appeal!



U.S. Department of Justice  
Office of Information Policy  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

Telephone: (202) 514-3642

Mr. Jesus A. Mondaca, Sr.  
Register No. 18558-198  
Federal Correctional Institution  
Post Office Box 5000  
Sheridan, OR 97378

Re: Appeal No. DOJ-AP-2019-000291  
Request No. EOUSA-2018-005751  
CDT:RCS

VIA: U.S. Mail

Dear Mr. Mondaca:

You appealed from the action of the Executive Office for United States Attorneys (EOUSA) on your Freedom of Information Act request for access to records located in the United States Attorney's Office for the Southern District of California concerning named third parties. I note that your appeal concerns EOUSA's letter dated September 24, 2018.

After carefully considering your appeal, I am affirming EOUSA's action on your request. The Freedom of Information Act provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. EOUSA properly refused to confirm or deny the existence of records responsive to your request. Confirming or denying the existence of such records, including law enforcement records, concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6), (7)(C). Additionally, it is reasonably foreseeable that confirming or denying the existence of such records would harm the interests protected by these exemptions. See, e.g., People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535, 544 (D.C. Cir. 2014) (upholding agency's refusal to confirm or deny existence of records that would confirm whether investigation of third party had occurred); see also Antonelli v. FBI, 721 F.2d 615, 618 (7th Cir. 1983) (finding that confirming whether third party has been the subject of investigation would likely "constitute an invasion of that person's privacy that implicates the protections of Exemptions 6 and 7").

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of EOUSA in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).



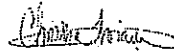
- 2 -

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

11/9/2018

X



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Christina D. Troiani, Associate Chief, for  
Sean O'Neill, Chief, Administrative Appeals Staff  
Signed by: OIP

10/16/2018

Mr. Jesus A. Mondaca, Sr.  
Register No. 18558-198  
FCI  
P.O. Box 5000  
Sheridan OR 97378

Dear Mr. Jesus A. Mondaca,

This is to advise you that your administrative appeal from the action of the EOUSA regarding Request No. EOUSA-2018-005751 was received by the Office of Information Policy (OIP) of the U.S. Department of Justice on 10/12/2018.

OIP has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number DOJ-AP-2019-000291. Please mention this number in any future correspondence to this Office regarding this matter. Please note that if you provide an e-mail address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at (202) 514-3642. If you have submitted your appeal through FOIAonline, you may also obtain an update on the status of your appeal by logging into your account.

Sincerely,  
**PRISCILLA**  
**JONES**  
Priscilla Jones

Digitally signed by PRISCILLA  
JONES  
Date: 2018.10.18 14:13:48  
-04'00'

Supervisory Administrative Specialist

TO: Felman, James  
 SUBJECT: FOIA/PA APPEAL-EOUSA-2018-005751  
 DATE: 10/04/2018 04:56:52 PM

From: Jesus A Mondaca, Sr. Fed. # 18558-198  
 c/o FCI Sheridan P.O. Box 5000  
 Sheridan OR 97378

To: Director Office of Information Policy (OIP),  
 United States Department of Justice, Suite 11050  
 1425 New York Avenue, NW, Washington, DC 20530-0001

FREEDOM OF INFORMATION AND PRIVACY ACT APPEAL No. EOUSA-2018-005751

Dear Sir/Madam or to whom it may Concern in the Office of the ("OIP") with regards to my request for records and this appeal. I do believe these records do exist, and/or not to be exempt under FOIA/PA as Claimed, and therefore appeal the denial of my request.

FACTS AND REQUEST:

1-On August 22, 2018 I forwarded a request under the Freedom of Information Act for records, and Privacy Act for records and/or correction of the same records that are "verifiably false" when compared to the original recordings made, along with the "original" raw notes of the agents. See Attached hereto this Appeal my FOIA/PA request Exhibit -A.

2- By Letter dated On September 24, 2018 I was denied my FOIA/PA Right's, and request Inter-Alia, i.e., with a Via Glomer response where the Agency Cite The Privacy Act 552a, along with the Freedom of Information Act exemptions under Title 5 @ 552(b)(6) and @ 552(b)(7), that which the agency claims pertain to those records, and whose disclosure would result in an Unwarranted invasion of Personal Privacy. See, Attached Letter by the Executive United States Attorneys Office dated September 24, 2018 Exhibit -B.

3- I believe I have a right to have those records and to have accurate records under FOIA/PA, and don't believe these records are exempt under the FOIA/PA as claimed. Moreover, I object to sections of my request were bring ignored. Including my request to forward that same "request" under FOIA/PA to the other agency counterparts of the Department of justice, that were involved in the same case, of which generated those same false records, that were "flowed" to the Department of justice Executive United States Attorney's Office.

PRIVACY ACT:

4- The Privacy Act requires federal agencies to maintain records used in making determinations "with such accuracy, relevance, timelines, and completeness as is reasonably necessary to assure fairness to the individual in the determination [of matters concerning the individual] title 5 USC @ 552a(e)(5). Title 5 USC @ 552a(d) allows individuals access to agency records about themselves and to request the amendment of records "they believe to be inaccurate, irrelevant, untimely, or incomplete." Doe v. Federal Bureau of Investigation, 290 U.S. App. D.C. 289, 936 F.2d 1346 at 1350 (D.C. Cir. 1991). Subsection (g)(1)(A) and (C) of the Privacy Act authorizes civil action to enforce the amendments and accuracy requirements. In addition, subsection (g)(4) of the Privacy Act provides for Monetary damages, costs and attorneys' fees where the agency is shown to have acted intentionally or willfully. Id. at 1350; accord Deters v. U.S. Parole Comm'n, 318 U.S. App. D.C. 89, at 85 F.3d 655 at 660-61 (D.C. Cir. 1996); Sellers v. Bureau of Prisons, 294 U.S. App. D.C. 361, 959 F.2d 307 at 310-12 (D.C. Cir. 1992).

5- A agency may be liable for "actual damages sustained by the individual as a result of the refusal or failure" to maintain accurate records and "consequently a determination is made which is adverse to the individual" as here, a Civil Action is available under Title 5 USC @ 552a(g)(1)(C) and (g)(4)(A). However, I seek to avoid needless litigation, and simply request my right's to have these records, and to have accurate records under FOIA/PA, be respected in full.

6- To the extent that I am seeking to have my records amended in this case, of which I require access and a accurate copy of the recordings that were made, along with all other agent's 'raw-notes' and reports. Here charging me with Conspiracy under Title 21 USC @ 841(b)(1)(A) and under section 846, falsely in the criminal case, because there was never no 'specific agreement' made. Here In fact, by myself, nor by my son Jesus Antonio Mondaca Jr. to actually sell, nor to deliver drugs, nor was any agreement "made" on the "price" of "Drugs" to sell informant Mr. Frank Cooney, nor to Joe Belmonte. There was no

agreement between me and my son Jesus Mondaca Jr. to sell, nor deliver any drugs, nor was there any "agreement on the price" of drugs to actually be sold to the informant.

7 In Sum-A noncommittal response to the informant's questions is not a "agreement" nor a Conspiracy. The Agency should do the commendable thing and release all the records Under the Freedom of Information Act. Moreover, then correct, and/or amend all these falsely generated records under the Privacy Act.

#### FREEDOM OF INFORMATION ACT:

8- The purpose of FOIA is to "pierce the Vail of administrative secrecy and to open agency action to the light of public scrutiny." *Morley v. C.I.A.*, 508 F.3d 1108, 1114, 378 U.S. App. D.C. 411(D.C. Cir. 2007)(quoting *Dep't of Air Force v. Rose*, 425 U.S. 352 at 361(1976). FOIA "requires agencies to comply with requests to make their records available to the public, unless the requested records fit within one or more of the nine categories of exempt material." See, e.g., *Yonemoto v. VA*, 686 F.3d 681 (9th Cir. 2011); *Dobronski v. FCC*, 17 F.3d 275 (9th Cir. 1994).

#### BACKGROUND FACTS:

9- JESUS ANTONIO MONDACA Senior and Junior were Charged with violation of Title 21 United States Code Section 841 and 846, thereafter convicted, as a result of a series of recorded telephone calls made by a Mr. Frank Cooney in a falsely Orchestrated "Sting operation" after the informant skipped out of town on gambling and drug debts he ran-up. The Agent's tactic's involving Mr. Frank Cooney, who owed Jesus Antonio Mondaca Money, and who became a government informant, after being arrested for being a felon in possession of a firearm, and subsequent phone calls to pay his debt to Jesus Antonio Mondaca if he could locate drugs was a sham, as there was never no drugs. There was also some Subsequent claimed telephone Conversation's recorded with a Mr. Joe Belmonte a claimed former drug dealer. There could very easily be some seriously misleading mix-up in this case! Informant "Cooney testified that following his indictment for being a felon in possession of a firearm, he agreed to cooperate with federal drug agents and to investigate whether several of his former criminal associates were still involved in dealing drugs." See, Attached Ninth Circuit Court of Appeals case Opinion on Appeal nos. 91-50563 & 91-50564 Exhibit-C.

10- The Indictment in this case falsely Charged both of the Mondaca's, Senior and Junior, that they "did knowingly and intentionally conspire with each other and with divers other persons unknown to the grand jury to knowingly and intentionally possess with intent to distribute approximately 5 kilograms and more of cocaine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1)." (quoting the Indictment verbatim). There was never any actual agreement nor any intent, nor any Drugs in this case.

11. Moreover, in this case the Indictment falsely Charged Specific "Overt Acts" numbered from 1 to 7, based on these withheld and claimed recorded calls. See Indictment Exhibit-D.

12- Jesus Antonio Mondaca Sr. who has been in prison or jail for almost 30 years, declares With firsthand knowledge of the facts and under the penalty of perjury states that:

(i)- The Mondaca's did not offer drugs to the informant. The informant asked for drugs and quoted the amounts. See, Overt Act at # 2.

(ii)- Jesus Antonio Mondaca Sr. Did in fact ask for some of his money in advance to what he was owed ((prior)) to the informant skipping town, and being arrested for being a felon in possession of a weapon. see Overt Act at # 3.

(iii)- Jesus Antonio Mondaca Sr. did have a conversation on drugs that the informant started, but he did not agree to anything. See, Overt Act at # 4.

(iv)- Jesus Antonio Mondaca Jr. never agreed to sell any amount of drugs nor did he agree to the cost. What he was doing was keeping the informant on the phone. See, Overt Act at # 5

(v)- Jesus Antonio Mondaca Jr. had no personal knowledge to confirm his father's agreement, because his father Jesus Antonio Mondaca Sr. did not make any agreement to sell cocaine, nor make any "agreement" on the price of cocaine statements made by the "informant".

See, Overt Act at # 6.

(vi)- Jesus Antonio Mondaca Jr. never agreed to sell the informant drugs. See Overt Act at # 7.

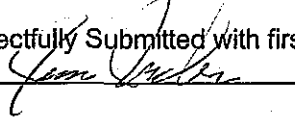
Simply making a passive noncommittal response to the informants statement's is not a "conspiracy".

13- The records sought in this case exist, and would not be violating the Privacy Act 552a if released, nor be in violation of the Freedom of Information Act section 552(b)(6) and (b)(7) as invoked. See, *Steinberg v. Dep't of Justice*, 179 F.R.D. 366, at 371 (D.D.C. 1998) Stating that after the government disclosed the names of FBI sources, it could not argue that the contents of their

FBI interviews should be withheld to protect their identities, aff'd, 1999 WL 1215779 (D.C.Cir. Nov. 5 1999). The requestors interest, and the Public Interest is far greater-importance in disclosure of all the requested records in this case, and far outweighs any claimed Agency exemptions as stated. The informant's names and what they did are in the 'Public domain' and Public record. It is in the 'Public interest' to know the government agent's ignored red-flags', and built it's case on flimsy evidence, while disregarding it's discovery obligations. It is also in the 'Public interest' to know that the government "might" have acted negligently or otherwise improperly during the Mondaca's prosecution. See, Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157 at 174 (2004).

13- FOIA's "limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." See, ACLU v. U.S. Dep't of Justice, 655 F.3d 1 at 5(D.C. Cir. 2011). If documents contains exempt information, the agency must still release 'any reasonably segregable portion' after deletion of the nondisclosable portions." See, Oglesby v. Dep't of Army, 79 F.3d 1172 at 1176(citing Title 5 USC @ 552(b)). "At all times, courts must bear in mind that FOIA mandates a strong presumption in favor of disclosure, and that the statutory exemptions, which are exclusive, are to be narrowly construed." See, ACLU, 655 F.3d at 5.

WHEREFORE, the forgoing facts and laws Jesus Antonio Mondaca Sr. Respectfully request's that all records, and recordings pertaining to Jesus Antonio Mondaca Sr. And Jr. be released in full, and that all these records be accurately amended to reflect the true context of the same recorded telephone calls made by the informant Provocateur to the Mondaca's after Informant Provocateur here Mr. Frank Cooney was arrested for being a felon in possession of a firearm.

Respectfully Submitted with first hand knowledge of the facts under 28 USC @ 1746 on this 4th day of October 2018 



U.S. Department of Justice

## Certification of Identity



2018-005751

FORM APPROVED OMB NO.  
1103-0016 EXPIRES 05/31/2020

**Privacy Act Statement.** In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester <sup>1</sup> Jesus A. Mondacc2 SrCitizenship Status <sup>2</sup> Permanent Resident Social Security Number <sup>3</sup> 569-66-1079Current Address FCI Sheridan P.O. Box 5000 Sheridan, OR 97378Date of Birth 05/11/1942 Place of Birth Tijuana, B.C.A. Mexico**OPTIONAL: Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

**Print or Type Name**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature <sup>4</sup> [Signature] Date 10/04/18

<sup>1</sup> Name of individual who is the subject of the record(s) sought.

<sup>2</sup> Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

<sup>3</sup> Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

<sup>4</sup> Signature of individual who is the subject of the record sought.

⇔ 18558-198 ⇔

Freedom Of Inf Office  
600 E ST NW  
Suite 7300  
Washington, DC 20530-0001  
United States

08-22-2018

7002 2410 0004 2377 0683

**FREEDOM OF INFORMATION AND PRIVACY ACT REQUEST:**

**From:**

Jesus Antonio Mondaca Sr. Fed.# 18558-198  
DOB May 11, 1942  
Federal Correctional Institution Sheridan  
P.O. Box 5000, Sheridan OR, 97378

**To:**

Executive office for the United States Attorneys  
Freedom of Information & Privacy Staff  
600 E. Street, N.W., Suite 7300  
Bicentennial Building Washington DC 20530-0001

Dear Sir or Madam and to whom it may concern.

This is a request under the Freedom of Information Act as amended (Title 5 USC @ 552) and in conjunction with the Privacy Act (Title 5 USC @ 552a).

1-I am writing to request the following information that is material, and of public interest on criminal prosecution and equal protections under the law, here concerning two Mexican immigrants in the United States, versus two United States citizens.

2-This request is coming forth based in part on legal proceedings of issue and that are deemed necessary to the proceedings at hand. Moreover, it is in the Public interest to know that the "Government built its case on an unreliable witness and ignored red flags,"(quoting Favish, 541 U.S. 157(2004)), and part of the "open government" policy.

**A-The FOIA/PA Request:**

3-The Specific information being requested at this point are All payments, and benefit's given to Mr. Cooney and Mr. Belmonte, with all the reports, and recordings generated that concern the same Two informant provocateurs 1) Mr. Frank Cooney and 2) Mr. Joe Belmonte, who became informants and agreed to set-up and help the government in the prosecution of Two Mexican Americans named Jesus Antonio Mondaca Junior ("Jr.") and Jesus Antonio Mondaca Senior ("Sr."), both father and son in a sting set-up of purported drug conspiracies 1989. All "raw notes", reports and recordings, to include all payments and or benefits for the informants, and their testimony against Mr. Mondaca Sr. and Jr. and up-until the trial and appeal in 1993. The public domain case is 1993 U.S. App. LEXIS 7460. The Case No. CR-89-00655-01 was Prosecuted for conspiracy in United States District Court for the Southern District of San Diego California.

**B-Foundation of Request:**

4-The case is based on controlled calls from the one informant Mr. Frank Cooney from Spokane Washington to the defendants on February 2nd,; February 4th; February 6th; and February 17th of 1989, also on March 7th; March 15th; and on March 19th 1989.

**C-Background Facts:**

5-The above informant Mr. Frank Cooney was arrested for being a felon in possession of a weapon, and agreed to cooperate after he was arrested, who had skipped town on gambling and drug debts he ran-up, and debts owed prior to his arrest for being a felon in possession of a weapon. Mr. Frank Cooney had contacted Jesus Antonio Mondaca Sr. by false pretense of being paid him his money, if Mr. Mondaca could locate cocaine for Mr. Cooney to purchase. However, unbeknown to Mr. Mondaca that this was a federal sting operation by the Drug Enforcement Agency ("DEA"), The Federal Bureau of Investigation, ("FBI") and by the Bureau of Alcohol and Tobacco and Firearms ("ATF") of which agencies orchestrated the case, and recorded the above calls and information then wrote reports and information that material to this request.

**D-Scope of Request:**

6-Mr. Jesus Antonio Mondaca Sr. and Jr. were both charged in a conspiracy indictment. The records, reports and recordings requested are: Any and all reports, tapes, photo's and recordings, prior to and during the informants arrest, and the Mondaca's arrest, and prosecution because. The Mondaca's are Charged in a "Conspiracy" and a Conspiracy case carries with it the inevitable risk of wrongful attribution of responsibility to one or more of the multiple defendants, and the informants. This is so because, the question of guilt or innocence may just turn on exactly what was said. Mr. Mondaca Sr. is entitled to all relevant reports and recordings and information to ascertain the precise substance of any Purported statement's. The purpose of FOIA is to 'pierce the Vail of administrative secrecy and open action to the light of public scrutiny."See, Dep't of Air Force v. Rose, 425 U.S. 352 at 361(2007). In a similar case in Grisell Marino v. DEA, 15 F. Supp. 3d 141(D.D.C. 2014) the Court reversed and remanded the FOIA Case for records and information per the FOIA/PA request.

7- Please note that FOIA/PA also provides that only limited portions of a filer are to be exempted from release and that the remainder must be released. As such, I am formally requesting that I be provided with all Non-Exempt portions relevant to all records and recordings to this request.

8-Please also Note that the informants in this case are in the Public Domain in United States v. Mondaca, 1993 U.S. App. LEXIS 7460(9th Cir.1993) Case No. CR-89-00655-01. See, e.g.,Favish, 541 U.S. at 174, and Kimbelin v. Dep't of Justice, 139 F.3d 944 at 949(D.C. Cir. 1998) Stating that "Privacy interest of individuals "undoubtedly" diminished where "the Public already knows who he is, what he was accused of, and that he received a relatively mild sanction." Jesus Antonio Mondaca Sr. holds the right to appeal the denial of any information of the deletion of any material that is pertinent to his interest. Should the agency issue a denial to honor this request be made. The FIOA/PA provides a reasonable expectation for response of ten (10) working days.

9-Please Also note that this is being filed with inmate help due to the requestor has been suffering from head injury since the age of 6 years old and was diagnose with post traumatic Stress disorder ("PTSD") all time limits should be waived in the interest of justice.

10- Moreover, since this was a multi agency operation between the Federal Bureau of investigation (FBI), the Drug Enforcement Agency (DEA) and the Alcohol tobacco and firearm (ATF) if any information requested is not in the possession of the Executive United States Attorneys Office (EUSAO), the requestor ask's that the Agency please forward this request to all counterpart "Agency(s)", that are in possession and/or control of the requested Information, Raw Notes, records and recordings, and additional 10 days would apply from the time the Agency receives the forwarded request. Mr. Mondaca Sr. agree's to pay for all copy fees, and request's that this FOIA/PA request be expedited.

Privacy Act:

11- Pursuant to the Privacy Act 5 USC @ 552a This requestor respectfully request's that if information comes to light that is verifiably false concerning Mr. Jesus Antonio Mondaca Senior. and/or Junior, that it be corrected, with notifications to any and all corrections made. i.e., Sua Sponte by the Agency to avoid needless litigation on, and/or in any appeal and/or Court process and review that may be had.

Thank You for your full Cooperation in this very important matter.

Respectfully Submitted in accordance with Title 28 USC @ 1746

Certificate of Identity is attached to this FIOA/PA Request. Sorry for any inconvenience and Thank You Again.

U.S. Department of Justice

## Certification of Identity

FORM APPROVED OMB NO. 1103-0016  
EXPIRES 10/31/13

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester <sup>1</sup> Jesus A. Mondaca Sr.

Citizenship Status <sup>2</sup> Permanent Residence Social Security Number <sup>3</sup> 569-66-1079

Current Address FCI Sheridan. PO BOX 5000 - Sheridan, OR 97378

Date of Birth 05/11/1942 Place of Birth Tijuana, B.C.A. Mexico

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature <sup>4</sup> Jesus A. Mondaca Sr. Date 08/21/18

## OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Print or Type Name

<sup>1</sup> Name of individual who is the subject of the record(s) sought.

<sup>2</sup> Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

<sup>3</sup> Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

<sup>4</sup> Signature of individual who is the subject of the record sought.



**U.S. Department of Justice**  
Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 5.400, 3CON Building  
175 N Street, NE  
Washington, DC 20530

(202) 252-6020  
FAX (202) 252-6048

September 24, 2018

Jesus A Mondaca, Sr.

#18558-198 FCI Sheridan P.O. Box 5000

Sheridan OR 97378

EOUSA-2018-005751

Subject: Cooney/Belmonte, 3<sup>rd</sup> Parties

Dear Mondaca,

The Executive Office for United States Attorneys has received your Freedom of Information Act request and assigned the above number to the request.

The Executive Office for United States Attorneys has received your Freedom of Information Act/Privacy Act request. It has been assigned the above number.

It is the policy of the Executive Office neither to confirm nor deny that records concerning living third parties exist. Further, any release to you of such records, if they do exist, would be in violation of the Privacy Act. 5 U.S.C. § 552a. The requested material would also be exempt from release pursuant to 5 U.S.C. § 552(b)(6) and/or (b)(7)(C) which pertain to records whose disclosure would result in an unwarranted invasion of personal privacy.

This is a final action on this above-numbered request. If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following website:

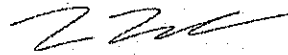
<https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If



you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may contact our FOIA Public Liaison at the telephone number listed above for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Kevin Krebs  
Assistant Director

**UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JESUS MONDACA SR. and JESUS MONDACA JR., Defendants-Appellants.**

**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

**1993 U.S. App. LEXIS 7460**

**Nos. 91-50563, 91-50564**

**March 2, 1993, Argued, Submitted, Pasadena, California**

**April 1, 1993, Filed**

**Notice:**

**THIS DISPOSITION IS NOT APPROPRIATE FOR PUBLICATION AND MAY NOT BE CITED TO OR BY THE COURTS OF THIS CIRCUIT EXCEPT AS PROVIDED BY THE 9TH CIR. R. 36-3.**

**Editorial Information: Subsequent History**

Reported as Table Case at: 990 F.2d 1264, 1993 U.S. App. LEXIS 13924.

**Editorial Information: Prior History**

Appeal from the United States District Court for the Southern District of California. D.C. No. CR-89-0655-JET. Jack E. Tanner, District Judge, Presiding

**Disposition:**

**AFFIRMED.**

**Judges:** Before: SCHROEDER, THOMPSON, and O'SCANLAIN, Circuit Judges.

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Defendants appealed from a judgment of the United States District Court for the Southern District of California, which entered a jury verdict convicting defendants of conspiracy to possess with intent to distribute cocaine in violation of 21 U.S.C.S. §§ 841(a)(1), 846, sentencing one defendant to 151 months in prison and one defendant to a mandatory life sentence without possibility of parole pursuant to 21 U.S.C.S. § 841(b)(1)(A). By allowing the jury to continue deliberating with eleven jurors when defendants were not personally present, the district court did not violate defendants' due process because the absence did not affect the outcome of the decision or the trial.

**OVERVIEW:** A jury found defendants guilty of conspiracy to possess with intent to distribute cocaine. The court sentenced one defendant to 151 months in prison and the other defendant to a mandatory life sentence without the possibility of parole pursuant to 21 U.S.C.S. § 841(b)(1)(A). On appeal, the court affirmed, holding that the jury had ample evidence from which to conclude that defendants were engaged in a conspiracy to possess with intent to distribute cocaine. Defendants were not denied due process when the district court, in the presence of counsel but without the personal presence of defendants, ordered the jury to continue deliberating with eleven jurors after one juror fell ill. The court reasoned that defendants' absence did not affect the outcome of either the decision or the trial where there was strong evidence against defendants and was no indication that a personal objection by defendants would have overcome the district court's desire to avoid a mistrial. The indictment against defendants should not have been dismissed because the government's scheme involving an informant

B09CASES

was not so grossly shocking and so outrageous as to violate the universal sense of justice.

**OUTCOME:** The court affirmed defendants' convictions because there was sufficient evidence from which the jury could find defendants guilty of conspiracy. Moreover, the district court's dismissal of a juror during deliberation when defendants themselves were not present, resulting in eleven jurors, was authorized by the rules of criminal procedure and did not violate due process.

#### **LexisNexis Headnotes**

##### ***Criminal Law & Procedure > Trials > Defendant's Rights > Right to Presence at Trial***

In reviewing whether a defendant's absence from a critical stage constituted error, the court focuses on (1) whether defendant likely would have objected to the dismissal of the juror, (2) whether such objection would have altered the district court's decision, and (3) whether there is reason to believe the verdict would have been different had the district court ruled differently.

##### ***Criminal Law & Procedure > Juries & Jurors > Size of Jury > General Overview***

##### ***Criminal Law & Procedure > Juries & Jurors > Disqualification & Removal of Jurors > Hardship, Illness & Incapacity***

##### ***Criminal Law & Procedure > Juries & Jurors > Size of Jury > Eleven Persons***

##### ***Criminal Law & Procedure > Trials > Judicial Discretion***

##### ***Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > General Overview***

##### ***Criminal Law & Procedure > Appeals > Standards of Review > Plain Error > General Overview***

Fed. R. Crim. P. 23(b) provides: If the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, in the discretion of the court a valid verdict may be returned by the remaining 11 jurors.

##### ***Criminal Law & Procedure > Juries & Jurors > Size of Jury > General Overview***

##### ***Criminal Law & Procedure > Appeals > Standards of Review > Plain Error > General Overview***

Fed. R. Crim. P. 23(b) is designed to provide a remedy other than mistrial when one of the jurors is found to be unable to continue service on the jury.

##### ***Criminal Law & Procedure > Search & Seizure > General Overview***

The government may use paid informants and undercover tactics to infiltrate existing criminal enterprises.

##### ***Criminal Law & Procedure > Jury Instructions > Particular Instructions > Theory of Defense***

A defendant is entitled to an instruction on his theory of defense as long it has some foundation in the evidence. The district court need not give a specific instruction proffered by the defendant if the instructions, taken as a whole, correctly explain the law.

##### ***Criminal Law & Procedure > Jury Instructions > Particular Instructions > Unanimity***

##### ***Criminal Law & Procedure > Criminal Offenses > Inchoate Crimes > Conspiracy > Elements***

##### ***Criminal Law & Procedure > Jury Instructions > Particular Instructions > General Overview***

##### ***Criminal Law & Procedure > Verdicts > Unanimity***

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A specific unanimity instruction is required: (1) if the jury indicates, by note to the court, that it is confused by the nature of the conspiracy; (2) if the indictment is sufficiently broad and ambiguous so as to present a danger of jury confusion; or (3) if the evidence is so factually complex that jury confusion may occur.

***Criminal Law & Procedure > Pretrial Motions > Disqualification & Recusal  
Civil Procedure > Judicial Officers > Judges > Disqualifications & Recusals > Federal Judges***

28 U.S.C.S. § 455 (a) directs a district judge to recuse himself from any proceeding in which his impartiality might reasonably be questioned. Nevertheless, parties cannot attack a judge's impartiality on the basis of information and beliefs acquired while acting in his or her judicial capacity.

***Constitutional Law > Equal Protection > Scope of Protection  
Criminal Law & Procedure > Trials > Burdens of Proof > Prosecution***

To succeed on a claim of selective prosecution, the defendant must show both that others similarly situated have not been prosecuted and also that the prosecution is based on an impermissible motive. When inquiring into prosecutorial patterns, the courts must consider prosecutions over a "reasonable" period of time.

***Criminal Law & Procedure > Discovery & Inspection > Discovery by Defendant > General Overview***

In a criminal prosecution, the defense is entitled to any material evidence known to the prosecution which may affect a witness' credibility.

***Criminal Law & Procedure > Appeals > Standards of Review > General Overview***

The appellate court reviews the sufficiency of evidence supporting a conviction to determine whether, reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

***Criminal Law & Procedure > Criminal Offenses > Controlled Substances > General Overview***

***Criminal Law & Procedure > Criminal Offenses > Inchoate Crimes > Conspiracy > General Overview***

***Criminal Law & Procedure > Sentencing > Guidelines***

***Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Cruel & Unusual Punishment***

***Criminal Law & Procedure > Trials > Judicial Discretion***

***Criminal Law & Procedure > Sentencing > Cruel & Unusual Punishment***

***Criminal Law & Procedure > Sentencing > Proportionality***

21 U.S.C.S. § 841(b)(1)(A) provides that a person convicted of a felony offense involving five or more kilograms of cocaine, having previously been convicted of two or more felony drug offenses, shall be sentenced to a mandatory term of life in prison without possibility of release. This provision does not violate U.S. Const. amend. VIII prohibition against cruel and unusual punishment, and the mandatory nature of the sentence does not violate U.S. Const. amend. V by depriving the district court of discretion to impose an individualized sentence. A defendant convicted of a drug conspiracy is sentenced as though the object of the conspiracy had been completed. 21 U.S.C.S. § 846.

## Opinion

## MEMORANDUM

In these consolidated appeals, **Jesus Mondaca**, Sr. and **Jesus Mondaca**, Jr. appeal from their convictions, following a joint jury trial, for conspiracy to possess with intent to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846. Mondaca Sr. also appeals from his mandatory life sentence without possibility of parole, imposed pursuant to 21 U.S.C. § 841(b)(1)(A).

The Mondacas' convictions were the result of a sting operation involving Frank Cooney, a government informant and former drug dealer. Cooney testified that following his indictment for being a felon in possession of a firearm, he agreed to cooperate with federal drug agents and to investigate whether several of his former criminal associates were still involved in dealing drugs. The Mondacas engaged in a series of taped conversations with Cooney in February and March of 1989, in which they negotiated the sale of cocaine. Conversations with Joe Belmonte, another drug dealer involved with Cooney, were also recorded. X

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The Mondacas' case was originally assigned to Judge John S. Rhoades. On December 17, 1990, defendants' motion for a mistrial was granted on the grounds of jury attrition and the case scheduled for retrial. The case was reassigned to visiting Judge Jack E. Tanner. Trial was suspended from March 13-18 due to the illness of Edmundo Espinoza, counsel for Mondaca Jr. During jury deliberations, one juror called in sick. The district court excused the ill juror and ruled that deliberations would continue with eleven jurors. The district court sentenced Mondaca Sr. to life in prison without possibility of parole, and Mondaca Jr. to 151 months imprisonment. The Mondacas raise numerous issues on appeal. We affirm.

I  
The Mondacas contend that they were denied due process when the district court, in the presence of counsel but without the personal presence of the defendants, ordered the jury to continue deliberating with eleven jurors after one juror fell ill.

In reviewing whether a defendant's absence from a critical stage constituted error, this court has focused on (1) whether defendant likely would have objected to the dismissal of the juror, (2) whether such objection would have altered the district court's decision, and (3) whether there is reason to believe the verdict would have been different had the district court ruled differently. *See United States v. Ahmad*, 974 F.2d 1163, 1165 (9th Cir. 1992).

In this case, we need not reach the question of whether the court's decision constituted a stage of trial requiring presence of counsel, *see id.*, because the defendants' absence did not affect the outcome of either the decision or the trial and thus does not require reversal. There is no indication that a personal objection by the Mondacas would have overcome the district court's desire to avoid a mistrial. Given the strength of the evidence against the Mondacas, we do not believe that the juror's absence affected the verdict. Accordingly, the Mondacas were not denied due process. *See id.*

## II

The Mondacas contend that the district court abused its discretion by excusing the ill juror and proceeding with eleven jurors. However, the Federal Rules of Criminal Procedure allow the district court to choose this option. "If the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, in the discretion of the court a valid verdict may be returned by



the remaining 11 jurors." Fed. R. Crim. P. 23(b). Rule 23(b) is designed to provide a remedy other than mistrial when one of the jurors is found to be unable to continue service on the jury. *United States v. Egbuniwe*, 969 F.2d 757, 760-61 (9th Cir. 1992).

This was the Mondacas' second trial; the first trial had ended in mistrial due to juror attrition. In this case, it was not possible to predict the length of the juror's absence. Thus this case is distinguishable from *United States v. Tabacca*, 924 F.2d 906 (9th Cir. 1991), where we reversed because the juror would definitely be available the next day. Under these circumstances, the district court did not abuse its discretion by excusing the ill juror and continuing deliberations with the remaining eleven jurors. See *United States v. Dischner*, 974 F.2d 1502, 1513 (9th Cir. 1992), *cert. denied*, 61 U.S.L.W. 3582 (1993).

### III

The Mondacas contend that the indictment should have been dismissed because the government committed outrageous conduct by having its agent, Frank Cooney, "instigate, create and maintain" the conspiracy for which they were convicted.

However, the appellants have not shown that "the Government's conduct is so grossly shocking and so outrageous as to violate the universal sense of justice." *United States v. Smith*, 924 F.2d 889, 897 (9th Cir. 1991). The government may use paid informants and undercover tactics to infiltrate existing criminal enterprises. See, e.g., *United States v. Slaughter*, 891 F.2d 691, 695-96 (9th Cir. 1989), *cert. denied*, 112 S. Ct. 3053 (1992). The evidence showed that the Mondacas were part of a distribution network importing large amounts of cocaine for distribution in Southern California. There is no indication that Cooney had to "generate" a supply scheme or do anything other than offer to buy multiple kilograms of cocaine in order to secure an eager response from the Mondacas. This scheme did not amount to outrageous conduct.

### IV

The Mondacas contend that the district court did not properly instruct the jury as to the elements of the crime of conspiracy and erred by refusing their proffered instructions on unanimity and intent.

A defendant is entitled to an instruction on his theory of defense as long it has some foundation in the evidence. *United States v. Streit*, 962 F.2d 894, 898 (9th Cir.), *cert. denied*, 113 S. Ct. 431 (1992). The district court need not give a specific instruction proffered by the defendant if the instructions, taken as a whole, correctly explain the law. *United States v. Mason*, 902 F.2d 1434, 1438 (9th Cir. 1990); see *Streit*, 962 F.2d at 899.

Here, the instructions as a whole adequately explained the elements of the crime and covered the theory of the defense. The district court's Instruction No. 10 stated the elements of conspiracy, including intent. Instruction No. 11 specified that a conspiracy must be a combination of two or more persons, and Instruction No. 17 explained that the government must prove the defendants acted with specific intent. The district court refused to supplement these instructions with the defendants' proffered instructions that "in order for [intent] to be proven, there must be a 'meeting of the minds' to carry out the illegal act" and that this "meeting of the minds" must be between "two or more persons" not including the government agent. Because the district court's instructions accurately stated the law, its refusal of the defendants' proffered instructions was not erroneous. See *Streit*, 962 F.2d at 899.

The Mondacas also contend that the district court should have supplemented its instructions with instructions designed to guarantee that the jury reach a unanimous decision that both defendants participated in the same conspiracy charged in the indictment, and conspired with someone other

than the government agent. A specific unanimity instruction is required: (1) if the jury indicates, by note to the court, that it is confused by the nature of the conspiracy; (2) if the indictment is "sufficiently broad and ambiguous so as to present a danger of jury confusion"; or (3) if the evidence is so factually complex that jury confusion may occur. *United States v. Anguiano*, 873 F.2d 1314, 1319-20 (9th Cir.), *cert. denied*, 493 U.S. 969 (1989). None of these circumstances is present here. Accordingly, the district court did not err by refusing to give a unanimity instruction.

V

The Mondacas contend that Judge Tanner should have recused himself from sentencing them because his behavior towards Mondaca Jr.'s counsel, Edmundo Espinoza, created an appearance of bias.

On March 12, 1991, the first day of the second trial began after Judge Tanner denied Espinoza's motion to withdraw as counsel for Mondaca Jr. On the morning of March 13, after being informed that Espinoza did not intend to appear, Judge Tanner directed the U.S. Marshals to find Espinoza, who was ill, and bring him to court. Counsel and the court argued over the procedures each should have followed to avoid Espinoza's being brought to court in the custody of the marshals. Judge Tanner required that Espinoza be examined at a local hospital in addition to being seen by Espinoza's own physician before accepting that he was too ill to appear.

28 U.S.C. § 455 (a) directs a district judge to recuse himself from any proceeding in which his impartiality "might reasonably be questioned." Nevertheless, "parties cannot attack a judge's impartiality on the basis of information and beliefs acquired while acting in his or her judicial capacity." *United States v. Monaco*, 852 F.2d 1143, 1147 (9th Cir. 1988) (quoting *United States v. Frias-Ramirez*, 670 F.2d 849, 853 n.6 (9th Cir.), *cert. denied*, 459 U.S. 842 (1982)), *cert. denied*, 488 U.S. 1040 (1989).

The argument between counsel and the judge took place outside the presence of the jury. The trial proceedings reveal no indication that Judge Tanner was anything other than impartial towards the defendants, and the Mondacas do not offer any such evidence apart from adverse rulings on their post-trial motions. These motions lacked merit, and the Mondacas can show no prejudice with respect to sentencing. The district judge did not abuse his discretion by failing to recuse himself. See *Monaco*, 852 F.2d at 1147.

VI

The Mondacas also allege two instances of prejudice arising from Judge Tanner's having conducted the trial. First, Judge Tanner allowed a witness to violate one of Judge Rhoades' earlier evidentiary rulings and then failed to grant the defense motion for mistrial based on this error, and second, Judge Tanner refused to allow an evidentiary hearing on the motion to dismiss for outrageous governmental conduct and refused to continue the motion hearing until counsel could review the trial transcript.

Judge Rhoades had ruled that Cooney could not testify to his pre-1983 dealings with Mondaca Sr. At trial, when Cooney testified about 1983, he stated: "We just started selling drugs again." However, the use of the word "again" was not prejudicial. See *United States v. Domina*, 784 F.2d 1361, 1372 (9th Cir. 1986), *cert. denied*, 479 U.S. 1038 (1987). Given the strength of the evidence, the district court did not err by denying the motion for mistrial. See *United States v. Davis*, 932 F.2d 752, 761-62 (9th Cir. 1991). Nor did any prejudice result from the denial of an evidentiary hearing and a continuance on the motion to dismiss for outrageous governmental conduct. See *United States v. Bergman*, 813 F.2d 1027, 1030 (9th Cir.), *cert. denied*, 484 U.S. 852 (1987).

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## VII

The Mondacas claim they were selectively prosecuted in violation of their right to equal protection. To succeed on a claim of selective prosecution, the defendant must show "both 'that others similarly situated have not been prosecuted and [also] that the prosecution is based on an impermissible motive.'" *United States v. Bourgeois*, 964 F.2d 935, 938 (9th Cir.) (quoting *United States v. Wayte*, 710 F.2d 1385, 1387 (9th Cir. 1983), *affirmed* 470 U.S. 598 (1985)), *cert. denied*, 113 S. Ct. 290 (1992). When inquiring into prosecutorial patterns, the courts must consider prosecutions over a "reasonable" period of time. *Id.* at 940.

The Mondacas contend that the "control group" of similarly situated persons includes only the persons who were implicated by Cooney's undercover activities. They argue that they were selectively prosecuted on the basis of their Hispanic identity because Joe Belmonte is white and was not prosecuted for his part in Cooney's attempts to negotiate cocaine sales.

The Mondacas' focus on a single investigation is unreasonably narrow. Moreover, the district court properly found that Belmonte was not "similarly situated" to the Mondacas within this group. The district court properly denied the motion to dismiss the indictment. See *Bourgeois*, 964 F.2d at 940-41.

## VIII

The Mondacas contend that their convictions should be reversed because the government failed to disclose that government witness Cooney received a \$ 250,000 payment from the DEA. Before the first trial, the Mondacas made a discovery request for disclosure of benefits received by Cooney for his cooperation. After the first trial ended in mistrial, both parties discovered that the DEA field office in Spokane had requested approval of a reward of up to \$ 250,000 for Cooney. The reward was rescinded after the U.S. Attorney's office in Spokane objected.

In a criminal prosecution, the defense is entitled to any material evidence known to the prosecution which may affect a witness' credibility. *Giglio v. United States*, 405 U.S. 150, 154-55 (1972); *United States v. Jennings*, 960 F.2d 1488, 1491-92 (9th Cir. 1992). However, any possible *Giglio* violation in this case was cured before the beginning of the second trial. The defense had a full opportunity to impeach Cooney. The second jury had the information before it when reaching its verdict. The district court found no evidence to suggest that the oversight had been intentional. Under these circumstances, the district court did not abuse its discretion by denying the motion to dismiss the indictment. See *Jennings*, 960 F.2d at 1491-92.

## IX

The Mondacas contend that the evidence introduced at trial was insufficient to support their convictions because the prosecution did not prove a "meeting of minds" between the Mondacas and Cooney to distribute a specific amount of cocaine for a specific price.

This court reviews the sufficiency of evidence supporting a conviction to determine whether, "reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Bishop*, 959 F.2d 820, 829 (9th Cir. 1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

The jury had ample evidence from which to conclude that the Mondacas were engaged in a conspiracy with each other, along with unknown suppliers, to possess with intent to distribute cocaine. Here, Frank Cooney testified at length about his extensive involvement with drug trafficking, including a partnership with Mondaca Sr. beginning in approximately 1983. In addition to

Cooney's testimony, the government introduced four tape-recorded conversations in which Mondaca Sr. discussed his access to large quantities of drugs and possible prices for a multi-kilogram cocaine sale, and four taped conversations in which Mondaca Jr. discussed his joint undertaking with Mondaca Sr. while negotiating to sell 12-15 kilograms of cocaine for \$ 15,000 per kilogram. The jury also heard live testimony from Joe Belmonte and heard a taped conversation in which Mondaca Sr. admitted his dealings in large amounts of cocaine and his negotiations with Cooney, and stated his intent to kill Cooney in order to avoid going to jail for his drug activities.

The evidence was sufficient to support the verdict, and the district court did not err by denying the motion for acquittal. See *United States v. Winslow*, 962 F.2d 845, 851 (9th Cir. 1992); *United States v. Meyers*, 847 F.2d 1408, 1412-13 (9th Cir. 1988).

X

Finally, Mondaca Sr. contends that his life sentence without possibility of parole violates the Fifth and Eighth Amendments. He argues that (1) the statute violates the Fifth and Eighth Amendments on its face, and (2) it violates the Fifth Amendment as applied to him because he was convicted for conspiracy and not for an offense involving any actual drugs.

21 U.S.C. § 841(b)(1)(A) provides that a person convicted of a felony offense involving five or more kilograms of cocaine, having previously been convicted of two or more felony drug offenses, shall be sentenced to a mandatory term of life in prison without possibility of release. This provision does not violate the Eighth Amendment prohibition against cruel and unusual punishment, and the mandatory nature of the sentence does not violate the Fifth Amendment by depriving the district court of discretion to impose an individualized sentence. *United States v. Van Winrow*, 951 F.2d 1069, 1071 (9th Cir. 1991); see also *Harmelin v. Michigan*, 111 S. Ct. 2680, 2709 (1991) (mandatory sentence of life without possibility of parole for first-time drug offender not unconstitutionally disproportionate). A defendant convicted of a drug conspiracy is sentenced as though the object of the conspiracy had been completed. 21 U.S.C. § 846; *United States v. Dabdoub-Canez*, 961 F.2d 836, 838 (9th Cir. 1992). Thus there was no constitutional error here.

AFFIRMED.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

November 1988 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESUS ANTONIO MONDACA, SR. (1),  
JESUS ANTONIO MONDACA, JR. (2),

Defendants.

Criminal Case No. 890655R

I N D I C T M E N T

Title 21, U.S.C., Secs. 841(a)(1) and 846 -  
Conspiracy to Possess Cocaine with  
Intent to Distribute

The grand jury charges:

Beginning at a date unknown to the grand jury and continuing up to and including April 3, 1989, within the Southern District of California and elsewhere, defendants JESUS ANTONIO MONDACA, SR. and JESUS ANTONIO MONDACA, JR. did knowingly and intentionally conspire with each other and with divers other persons unknown to the grand jury to knowingly and intentionally possess with intent to distribute approximately 5 kilograms and more of cocaine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1).

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JPP:mdj:San Diego  
6/23/89:016



OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed within the Southern District of California and elsewhere:

1. On or about February 2, 1989, in a telephone conversation between Los Angeles, California, and Spokane, Washington, defendant JESUS ANTONIO MONDACA, SR. spoke with a confidential informant about conducting a narcotics transaction.
2. On or about February 4, 1989, in a telephone conversation between Los Angeles, California, and Spokane, Washington, defendant JESUS ANTONIO MONDACA, SR. offered to sell the confidential informant 10 to 20 kilograms of cocaine and asked whether he would also like to buy marijuana.
3. On or about February 6, 1989, in a telephone conversation between Los Angeles, California, and Spokane, Washington, defendant JESUS ANTONIO MONDACA, SR. asked the confidential informant for a \$3000 advance on the cocaine he intended to sell to the confidential informant.
4. On or about February 17, 1989, in a telephone conversation between Los Angeles, California, and Spokane, Washington, defendant JESUS ANTONIO MONDACA, SR. agreed to sell 15 kilograms of cocaine to the confidential informant for approximately \$15,000 to \$16,000 per kilogram.
5. On or about March 7, 1989, in a telephone conversation between San Diego, California, and Spokane, Washington, defendant JESUS ANTONIO MONDACA, JR. agreed on behalf of he and his father to sell the confidential informant 15 kilograms of cocaine for \$15,000 per kilogram.
6. On or about March 15, 1989, in a telephone conversation between San Diego, California, and Spokane, Washington, defendant JESUS ANTONIO MONDACA, JR. confirmed his and his father's agreement to sell 15 kilograms of cocaine for \$15,000 per kilogram to the confidential informant

1 and stated that he (JESUS ANTONIO MONDACA, JR.) had access to 300  
2 kilograms of cocaine.

3 7. On or about March 19, 1989, in a telephone conversation between San  
4 Diego, California, and Spokane, Washington, defendant JESUS ANTONIO  
5 MONDACA, JR. agreed to sell the confidential informant an additional  
6 10 to 12 kilograms of cocaine for \$15,000 per kilogram.

7 All in violation of Title 21, United States Code, Section 846.

8 DATED: June 23, 1989.

9  
10  
11 Foreperson

12 WILLIAM BRANIFF  
13 United States Attorney

*Not Signed*

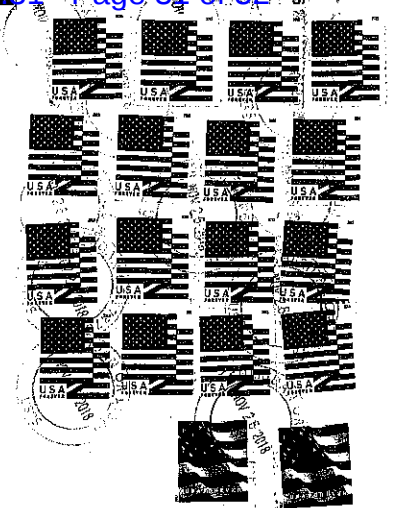
14 By: JOHN P. PIERCE  
15 Assistant U.S. Attorney

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